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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,734	10/06/2000	Ib Mendel-Hartvig	10806-129	1611
24256	7590	11/21/2005	EXAMINER	
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			COUNTS, GARY W	
			ART UNIT	PAPER NUMBER
			1641	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/582,734	<b>Applicant(s)</b> MENDEL-HARTVIG ET AL.	
	<b>Examiner</b> Gary W. Counts	<b>Art Unit</b> 1641	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 01 November 2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

see attachment.

### **Notification of Non-Compliant Appeal Brief**

A review of Application 09/582,734 indicates that the Appeal Brief filed on November 1, 2004 is defective because the rules under 35 U.S.C. 1.192(c) were abolished on September 13, 2004 and replaced by 37 CFR 41.37(c).

A review of the application reveals that the following sections are missing from the Appeal Brief filed November 1, 2004:

- (1) "Summary of claimed subject matter" as set forth in 37 CFR 41.37(c)(1)(v);
- (2) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR 41.37(c)(1)(vi);
- (3) "Evidence appendix," as set forth in 37 CFR 41.37(c)(1)(ix); and
- (4) "Related proceedings appendix," as set forth in 37 CFR 41.37(c)(1)(x).

Accordingly, the Appeal Brief filed on November 1, 2004 does not comply with the new rules under 37 CFR 41.37(c). It is required that a substitute Appeal Brief be submitted that is in compliance with 37 CFR 41.37(c). For more information on the Board's new rules, please see the web page entitled "more Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfor.html>

Thus appellants must file a substitute Appeal Brief in compliance with 37 CFR 41.37.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary W. Counts whose telephone number is (571) 2720817. The examiner can normally be reached on M-F 8:00 - 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Counts  
Examiner  
Art Unit 1641  
August 30, 2005



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SUPERVISORY PATENT EXAMINER  
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08/31/05